

1 The Honorable Barbara J. Rothstein
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON - SEATTLE

RICARDO SALOM, CATHERINE
PALAZZO as assignee for Ruben Palazzo,
and PETER HACKINEN, *on their own
behalf and on behalf of other similarly
situated persons*,

Plaintiffs,

vs.

NATIONSTAR MORTGAGE LLC

Defendant.

Case No. 2:24-cv-00444-BJR

**PLAINTIFFS' RESPONSE AND
OPPOSITION TO THE CONSUMER
FINANCIAL PROTECTION BUREAU'S
MOTION TO WITHDRAW ITS
AMICUS BRIEF (Dkt. 112)**

1 After the parties have substantially briefed nearly all issues presented to the Court
 2 concerning Phase 1 discovery, as narrowed by the Court,¹ the Consumer Financial Protection
 3 Bureau (“CFPB” or “Bureau”) has moved to withdraw its prior Amicus Brief (Dkt. 112), which
 4 was filed in this matter on August 25, 2024 (Dkt. 49-1). In response and opposition, the Plaintiffs
 5 state as follows:

6 **I. CERTIFICATION OF COUNSEL**

7 CFPB’s counsel and Plaintiffs’ counsel conferred about the motion by email and
 8 telephonic conference on the date it was filed—i.e. May 23, 2025. In that conference, the CFPB
 9 was unable to identify any change in the statutes, case law, or promulgated regulations issued by
 10 the CFPB related to the arguments raised by the Parties and the CFPB in this action. The CFPB
 11 did identify the Bureau’s recent election to withdraw certain other guidance identified in its
 12 Motion, that it published in the Federal Register on May 12, 2025—i.e. Interpretive Rules, Policy
 13 Statements, and Advisory Opinions; Withdrawal, 90 FR 20084-01. The CFPB was not able to
 14 state the final basis for its decision to withdraw during the conference.

15 **II. STANDARD OF REVIEW**

16 This Court’s Local Rules explain:

17 There is a strong presumption of public access to the court’s files. This rule applies
 18 in all instances where a party seeks to overcome the policy and the presumption
 19 by filing a document under seal. (1) A party must explore all alternatives to filing
 20 a document under seal.

21 Local Rule 5(g).

22 Further, the Ninth Circuit has also explained:

23 “It is clear that the courts of this country recognize a general right to inspect and
 24 copy public records and documents, including judicial records and documents.”

25 ¹ Plaintiffs’ Motion to Strike or Disregard Materially Inconsistent Testimony of Nationstar
 26 Mortgage LLC and its Senior Vice President Courtney Ehinger (Dkt. 103) remains open and not
 yet ripe for a ruling by the Court. Plaintiffs’ reply in support will be due on June 10, 2025.

1 *Nixon v. Warner Commnc'ns, Inc.*, 435 U.S. 589, 597, 98 S.Ct. 1306, 55 L.Ed.2d
 2 570 (1978). Following the Supreme Court's lead, "we start with a strong
 3 presumption in favor of access to court records." *Foltz v. State Farm Mut. Auto.*
 4 *Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir.2003). The presumption of access is
 5 "based on the need for federal courts, although independent—indeed,
 6 particularly because they are independent—to have a measure of accountability
 7 and for the public to have confidence in the administration of justice." *United*
 8 *States v. Amodeo (Amodeo II)*, 71 F.3d 1044, 1048 (2d Cir.1995); *see also*
 9 *Valley Broad. Co. v. U.S. Dist. Court—D. Nev.*, 798 F.2d 1289, 1294 (9th
 10 Cir.1986) (explaining that the presumption of public access "promot[es] the
 11 public's understanding of the judicial process and of significant public events").
 12

13 Ctr. for Auto Safety v. Chrysler Grp., LLC, 809 F.3d 1092, 1096 (9th Cir. 2016)

14 Finally, this Court "has broad discretion to appoint amici curiae" and its decision to
 15 approve the participation or non-participation of amici can only be reversed based upon an abuse
 16 of discretion. *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds*
 17 by *Sandin v. Conner*, 515 U.S. 472 (1995).

18 **III. ARGUMENT**

19 **A. THE CFPB'S PRETEXT FOR WITHDRAWING ITS AMICUS BRIEF IS NOT A BASIS**
 20 **TO STRIKE OR REMOVE ITS STATEMENT OF THE LAW APPLICABLE TO THIS**
 21 **CASE**

22 Since filing its Amicus Brief (Dkt. 49-1)² nearly ten months ago, nothing in the operative
 23 statutes before the Court enacted by Congress or by the states of Maryland or Washington (e.g.
 24 15 U.S.C.A. § 1639g, 15 U.S.C.A. § 1639c(e)(3), 15 U.S.C. § 1692f(1), 12 U.S.C. § 2610, Wash.
 25 Rev. Code Ann. § 19.16.250(21), MD. CODE ANN., COM. LAW § 14-202(8)(11)), CFPB
 26 promulgated regulations (e.g. 12 C.F.R. § 1026.36(c)(3), 12 C.F.R. § 1006.22(b), and 12 C.F.R.
 27 § 1024.12), or applicable case law cited in the Amicus Brief has changed with respect to the
 28 Parties' claims before the Court. The Bureau and its counsel are presumed to have filed and

29
 30 ² The Amicus Brief was also presented to the Court for the limited issues of "whether
 31 [Nationstar] can apply a contractual provision requiring notice and an opportunity to cure the
 32 instant FDCPA claims, and whether [Nationstar] violated the FDCPA by collecting payoff
 33 statement fees that were neither expressly authorized by the agreement creating the debt nor
 34 permitted by law." Dkt. 49 at ¶ 4.

1 maintained the Amicus Brief in good faith and for the proper purpose of advancing legal
 2 contentions supported by existing law. Fed. R. Civ. P. 11. Now, following what appears to be a
 3 political decision to withdraw various advisory opinions (without any changes to the underlying
 4 regulations or statutes by the CFPB or Congress), the Bureau seeks to withdraw the entire Amicus
 5 Brief. Dkt. 112.

6 Because the operative laws, promulgated regulations, and case law remain unchanged,
 7 there is no just basis to disregard the Amicus Brief altogether just because there has been a change
 8 of leadership at the Bureau. Further, the withdrawal notice published in the Federal Register
 9 expressly limits its reach to whether the various withdrawn materials should be “enforced or
 10 otherwise relied upon by the Bureau,” and says nothing about whether Courts or litigants may
 11 rely upon those materials. *See* 90 FR 20084-01 at § I.³ Other federal courts have reached similar
 12 conclusions. *See e.g.*, *Roberts v. Unlock Partnership Solutions AOI, Inc. et al.*, U.S.D.C. for Dist.
 13 of N.J. ([Case No. 24-cv-1374-CPO at Dkt. 74](#) (Text Order Dated 2/20/2025)) (“The CFPB may
 14 withdraw its amicus brief, (ECF No. 58), as it no longer represents the agency’s position.
 15 However, the request to strike the brief from the record is denied, as the brief was accepted by
 16 the Court and has been incorporated into the adjudicatory record. The amicus brief will remain
 17 on the docket for transparency but will not be considered as reflecting the CFPB’s current views”);
 18 *The People of the State of New York, by Letitia James v. Citibank, NA*, U.S.D.C. for the S.D. of
 19 N.Y. ([Case No. 1:24-cv-00659-JPO at Dkt. 72](#)) Text Order Dated 3/27/2025) (“The motion is
 20 granted insofar as the CFPB may disclaim the positions described in its previously filed statement
 21 of interest (ECF No. 28-1) and withdraw as amicus in this case. Any request included in the
 22 motion to strike or otherwise remove the statement of interest from the docket is denied. The
 23 document was filed in relation to a then-pending motion and is accordingly part of the public
 24

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 26 ³ <https://www.govinfo.gov/app/details/FR-2025-05-12/2025-08286> (last accessed on May 30,
 2025).

1 record. However, it will no longer be considered to reflect the current position of the CFPB. The
 2 Clerk is directed to terminate the CFPB as amicus”).

3 The Bureau may well have the authority to unilaterally revise its purported policy
 4 guidance at will (Plaintiffs take no position on that point). However, the same cannot be said for
 5 regulations promulgated under the authority granted to the agency by Congress (which the May
 6 12, 2025 Federal Register Notice does not even address). As the Supreme Court explained,
 7 Court’s must “independently interpret the statute and effectuate the will of Congress subject to
 8 constitutional limits. The court fulfills that role by recognizing constitutional delegations.” *Loper*
 9 *Bright Enters. v. Raimondo*, 603 U.S. 369, 395 (2024). Here, the relevant regulations were
 10 promulgated through formal notice and comment procedures and cannot simply be withdrawn
 11 based on shifting political preferences, nor have the regulations been withdrawn.

12 To the extent the Bureau now seeks to withdraw its Amicus Brief from further
 13 consideration solely on the basis of a single advisory opinion, rather than on the any change in
 14 the he regulations, statutes, and case law identified in the Amicus Brief or its published
 15 regulations (which have not changed), Plaintiffs do not oppose the Court declining to consider
 16 that portion of the Amicus Brief. However, Plaintiffs respectfully oppose the Motion to the extent
 17 the remainder of the Amicus Brief offers a statement of the law and regulations that remain
 18 unchanged, and still have some benefit and assistance to the Court.

19 **B. THE CFPB’S AMICUS BRIEF IS PART OF THE ADJUDICATORY RECORD AND**
 20 **SHOULD NOT BE STRUCK OR SEALED FROM THE RECORD**

21 The Bureau’s Amicus Brief is part of the judicial record in this case and should not be
 22 struck, sealed, or hidden from public view. Local Rule 5(g); *Ctr. for Auto Safety*, 809 F.3d at
 23 1096. While the Amicus Brief was submitted in connection with a prior motion, the Court retains
 24 broad discretion to consider or disregard the Amicus Brief at any stage of the proceedings.
Hoptowi, 682 F.2d at 1260.

1 Moreover, although the Amicus Brief partially relied upon prior CFPB guidance that has
 2 since been withdrawn, that guidance still offers superior analysis as to why certain practices by
 3 Nationstar violate existing laws and regulations. Plaintiffs acknowledge that the withdrawn
 4 guidance is not binding law. However, that does not change the prior guidance's analytical value,
 5 nor the thoroughness and accuracy of its legal reasoning.

6 Therefore, on this additional basis, Plaintiffs respectfully request that the Court decline to
 7 strike or seal the Bureau's Amicus Brief from the record. The more appropriate course is to
 8 recognize that while the Bureau no longer endorses the withdrawn agency guidance (but not the
 9 law and regulations), the underlying legal analysis and cited regulations remain unchanged. *Cf.*
 10 *Roberts v. Unlock Partnership Solutions AOI, Inc. et al.*, U.S.D.C. for Dist. of N.J. ([Case No. 24-cv-1374-CPO at Dkt. 74](#)); *The People of the State of New York, by Letitia James v. Citibank, NA*,
 11 U.S.D.C. for the S.D. of N.Y. ([Case No. 1:24-cv-00659-JPO at Dkt. 72](#))).

12 **IV. CONCLUSION**

13 Based on the foregoing, Plaintiffs respectfully request that the Court grant the Bureau's
 14 requested relief only to the extent it reflects the Bureau's current view related to its withdrawn
 15 Advisory Guidance (withdrawn by notice in the Federal Register on May 12, 2025--90 FR 20084-01). Plaintiffs oppose any broader relief, including withdrawal of the Amicus Brief as it relates to
 16 the unchanged statutes, governing case law, or the Bureau's still-operative regulations.

17 DATED June 3, 2025.

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